



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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January 3, 1997  
AO-97-01

Mayor Edward M. Lambert, Jr.  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Payroll deduction plan for Local 1118 AFSCME

Dear Mayor Lambert:

This letter is in response to your December 6, 1996 request for an advisory opinion.

Question

You have asked if an Agreement between the City of Fall River and Local 1118 AFSCME, by which the City agrees to administer a payroll deduction plan allowing City employees to make contributions to the American Federation of State County and Municipal Employees' federal political action committee, (known as "PEOPLE") complies with the campaign finance law, M.G.L. c. 55.

Answer

Yes, if the Agreement is modified to expressly require the PAC to pay all costs incurred by the City in administering the plan.

Discussion

In advisory opinion AO-95-29, this office advised Fall River Treasurer-Collector Richard A. Vasconcellos that the City should not administer a payroll deduction plan allowing City employees to make automatic contributions to the union's PAC. Administration of a deduction plan in that instance, we explained, would involve the use of public resources for political purposes, and therefore it would not be consistent with the campaign finance law. See Anderson v. City of Boston, 376 Mass. 178 (1978).

In the Anderson decision, the court stated that municipalities may not appropriate funds "for the purpose of influencing the result" of a referendum question. 376 Mass. at 184. In AO-95-29 we acknowledged that collective bargaining agreements between governmental units and public employees' unions occasionally require deductions to be processed for political contributions. We also assumed that payroll

deductions can not be processed absent such an agreement. The collective bargaining agreement between the City and the union did not, at that time, require the City to process deductions. Therefore, we did not need to decide whether public resources may be used to administer deduction plans mandated by collective bargaining agreements.

After the opinion was issued, however, the City and the union modified their collective bargaining agreement to include the following article:

The employer agrees to deduct from the wages of any employee who is a member of the Union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the employer and the Union. The employer agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

You "understand that the union has agreed to pay any and all costs to the City for administration of the plan, and are willing to make that part of the written agreement, if necessary."

As noted in AO-95-29, in Anderson, the court stated that chapter 55 "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Anderson v. City of Boston, 376 Mass. 178, at 186-187. Therefore, this office has concluded that the campaign finance law prohibits the use of any public resource for any political purpose. See IB-91-01 (summarizing this office's interpretation of the Anderson decision). The prohibition would seem to be applicable even if resources are provided pursuant to a collective bargaining agreement.

Public resources include, but are not limited to staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines, computers and word processors, as well as the use of a state, county or municipal seal. Therefore, even if the only support provided by a municipality is the receipt of deduction forms, the preparation of an itemized statement for the union, and the delivery of checks to the PAC, we would conclude that public resources have been used.

In conclusion, we believe that two requirements must be met before a municipality may administer a payroll deduction plan for a PAC. First, a collective bargaining agreement must

require the municipality to administer the plan. Second, to avoid the receipt of public resources, the PAC (or the union on behalf of the PAC) must pay the municipality the fair market value for all administrative services or for any other benefit received from the municipality.<sup>1</sup>

The Agreement should therefore be modified, as you have suggested, to include the requirement that the PAC (or the union on behalf of the PAC) pay all costs incurred by the City in administering the plan.<sup>2</sup>

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,



Michael J. Sullivan  
Director

MJS/cp

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<sup>1</sup> The PAC's reimbursement to the City is to some extent analogous to the required reimbursement which must take place where a corporation has incurred costs in administering a dues collection system for a PAC. See M.G.L. c. 55, s. 8 (prohibiting corporate contributions to candidates), Opinion of the Attorney General, November 6, 1980, and OCPF advisory opinion AO-88-28.

<sup>2</sup> PEOPLE is a federal PAC and therefore its reporting obligations are not within the jurisdiction of this office. If a union pays administrative costs for a Massachusetts PAC, the PAC must disclose, in a report filed with this office, the receipt of an in-kind contribution from the union.